

COMMONWEALTH OF MASSACHUSETTS  
THE SUPERIOR COURT  
BOSTON, MA 02109

AUG 16 2004

SUZANNE V. DELVECCHIO  
CHIEF JUSTICE

TELEPHONE  
(617) 788-7301

August 13, 2004

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Committee for Public Counsel Services  
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*Copies for*  
*Andy*  
*Pat*  
*Denise Regan?*  
*Cathy B.*  
*Lisa G.*

**RE: AMENDED SUPERIOR COURT STANDING ORDER 2-86  
CRIMINAL CASE MANAGEMENT**

*(w.f.r.)*

Dear District Attorney Leahy:

The Superior Court is happy to provide you with a copy of the final revisions to Superior Court Standing Order 2-86, entitled: "Criminal Case Management." This Standing Order, effective as to criminal cases initiated by indictment on or after September 7, 2004, is intended to comply with the Administrative Office of the Trial Court's request for criminal time standards, and was previously published in Lawyer's Weekly in draft form in May 2004. A draft was also circulated for comment to judges, clerk magistrates, the Attorney General's Office and district attorneys, the Committee for Public Counsel Services, and the criminal defense bar.

Comments were received from a number of the groups listed above and were very helpful to the Court's consideration of issues involved in formulating a set of criminal case time standards. After review, the Court has made additional changes to the draft Standing Order which are reflected in the final Order. The Court gave consideration to concerns relating to inconsistencies between the automatic discovery requirements of the proposed Standing Order

and those of the Massachusetts Rules of Criminal Procedure 14(a). The Amended Standing Order now provides that automatic discovery, as defined by Mass. R. Crim. P. 14(a), shall be provided, or notice thereof given, at arraignment if possible or thereafter at the earliest time, in order to permit the Commonwealth and the Defendant sufficient time to evaluate the case and meaningfully participate in a pretrial conference. The timing of the pretrial hearing has also been adjusted to permit the exchange of discovery as contemplated by the Rules of Criminal Procedure. The pretrial hearing, preceded by a pretrial conference between counsel, shall take place not later than the half-way point as determined by the case track designation. Further, the Standing Order provides that a case track designation, based on the lead charge, shall be presumptively set at the time of arraignment, subject to reconsideration by the Court at the request of either party.

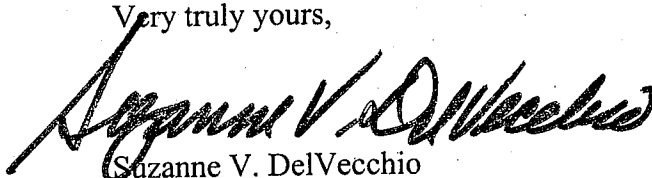
In addition, the Superior Court considered concerns expressed by the Committee for Public Counsel Services relating to the scheduling of the pretrial hearing and pretrial conference on the same day for custody cases. It was suggested that this could undermine the purpose of the rules of criminal procedure which provides for two distinct events. Acknowledging the practical difficulties associated with the transportation and security of pretrial detainees the Court has determined that conducting the pretrial conference and hearing on the same day, but as separate and discrete events, does not offend the revised rules of criminal procedure. However, the Standing Order has been modified to permit the scheduling to both events on the same day only if the prosecution has furnished discovery to the defendant at least 7 days prior to the pretrial hearing. This will ensure that a defendant and counsel have had an opportunity to review discovery prior to, and to make meaningful, the pretrial conference.

The Superior Court has also considered suggestions from both the prosecution and defense community that the draft time periods, of four, six, and twelve months depending on the case track designation, were too optimistic. After consideration, the Court has modified the time periods to six, nine, and twelve months for "A", "B", and "C" track cases, respectively. The Standing Order also made adjustments to the types of crimes included in each track based on suggestions by the bench and bar.

Finally, numerous comments were received regarding the applicability of the Standing Order to current practice in certain counties, particularly those utilizing a single criminal session. While a purpose of the Standing Order is to achieve consistent and uniform case management methods for the Superior Court, the Order provides that judges sitting in assignment sessions may exercise their discretion to modify the Order to accommodate the needs of that court.

I wish to sincerely thank you and/or others in your office who took the time to comment on the proposed changes to Standing Order 2-86.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Suzanne V. DelVecchio", written in a cursive style.

Suzanne V. DelVecchio  
Chief Justice of the Superior Court

**COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT**

**SUFFOLK, ss.**

**SUPERIOR COURT  
DEPARTMENT**

**STANDING ORDER NO. 2-86  
(AMENDED)**

**Applicable to All Counties  
and only to cases initiated by indictment on or  
after September 7, 2004**

**Subject: Criminal Case Management**

**I.**

**PURPOSES**

To improve procedures in criminal cases in the Superior Court.

To promote uniformity in practice throughout the Commonwealth.

To insure compliance with the provisions and aims of the Rules of Criminal Procedure and Rules of the Superior Court.

To recognize that a defendant's right to speedy trial, and the public, including victims and witnesses, interest in a timely, fair and just resolution of criminal cases, is best achieved by application of uniform and consistent time standards for the conduct of criminal cases in Superior Court.

To encourage the cooperation between the court, the prosecuting attorneys and the defense bar with a view towards a just and efficient disposition of criminal cases.

To provide guidelines for application in the great majority of cases; it being understood that as a matter of discretion, in specific situations, a judge may extend time periods and vary requirements in the interest of justice.

To identify non-trial cases at the earliest stage so as to encourage their timely disposition with consequent savings of public and private resources.

## II.

### ARRAIGNMENTS

Arraignment will be accomplished in the first session by the judge presiding in that session, except in such counties utilizing a magistrate session pursuant to G. L. c. 221, §§ 62B and 62C in which case arraignment shall occur before the magistrate.

An arraignment in Superior Court shall be conducted according to Mass. R. Crim. P. 7. After entry of the defendant's plea to the charges, the judge or magistrate shall schedule dates for a mandatory pretrial conference and a mandatory pretrial hearing, the latter to occur within 90 days of arraignment for an "A" track case, 135 days of arraignment for a "B" track case, and 180 days of arraignment for a "C" track case.

At arraignment, the clerk shall issue a Notice of Presumptive Track Designation in the form of a Scheduling Order, setting forth dates at or before which certain events shall occur. The presumptive track designation shall be determined based solely on the lead indictment or charge unless a judge, for good cause shown, determines that a different track designation shall apply. In addition, the judge or clerk shall set forth dates for the filing and hearing of discovery motions and shall set a date for the filing of the Certificate of Compliance under Mass. R. Crim. P. 14(a)(3).

## III.

### CASE TRACK DESIGNATIONS

Cases shall be assigned a presumptive case track at arraignment that will establish a presumptive time period for disposition of the case. Cases shall be designated "A", "B", or "C" track cases based on the offense charged in the indictment, and on consideration of any extenuating or special circumstances raised by the parties. In the event more than one charge exists, the case track shall be the longest track determined by reference to the charges.

There shall be three Criminal Case Tracks as follows:

<u>"A"</u>	<u>"B"</u>	<u>"C"</u>
Assaults and batteries (non-sexual)	Arson	Kidnapping
Breaking and entering	Embezzlement	Manslaughter
Burglary	Fraud	Murder
Civil rights offenses	Home invasion	Rape
Destruction of property	Larcenous scheme	
Firearms offenses	Robberies	
Larcenies	Sexual offenses other than rape	
Mayhem	Motor Vehicle Homicide	
Narcotics offenses		
Operating under the influence		

Accessories to specific offenses, assaults with the specific intent to commit other offenses, attempts, cases carrying enhanced penalties, and conspiracies shall receive the same case track designations as provided for the underlying offenses.

The Clerk shall enter the Case Track designation on the court's electronic docket, and shall enter the scheduled dates for pretrial and trial proceedings in a Scheduling Order.

#### IV.

#### AUTOMATIC DISCOVERY

Automatic discovery, as defined by Mass. R. Crim. P. 14(a), shall be provided, or notice thereof given, at arraignment if possible, or thereafter at the earliest time possible, in the exercise of due diligence, in order to permit the Commonwealth and the Defendant sufficient time in advance of the pretrial conference to evaluate the case and meaningfully participate in a pretrial conference.

#### V.

#### THE PRETRIAL CONFERENCE

The prosecuting attorney and defense counsel shall confer prior to the scheduled pretrial hearing in order to conference the case and to prepare a written pretrial conference report. In accordance with Mas. R. Crim. P. 11(a), the defendant shall be available for attendance at the pretrial conference. Further, the court may require the conference to be held at court under the supervision of a judge or magistrate. The pretrial conference may occur on the same day as the pretrial hearing provided that the prosecution has furnished discovery to the defendant at least 7 days prior to the pretrial hearing.

The parties shall discuss those matters set forth in Mass. R. Crim. P. 11(a)(1), and shall reflect the results of the conference in the written conference report filed in accordance with Mass. R. Crim. P. 11(a)(2). Counsel shall also discuss whether the case can be disposed of by means of a plea and, if so, shall propose a date for change of plea within the conference report. Except where the parties have tentatively reached an agreement to resolve the case by change of plea, counsel shall set forth within the conference report proposed dates for any anticipated pretrial events (motion filing and hearing dates, etc.) and a proposed trial date which shall be determined according to the designated case track for the lead charge of the indictment.

#### VI.

#### THE PRETRIAL HEARING

Counsel who are going to try the case shall attend the pretrial conference and pretrial hearing and shall personally sign the conference report. In all cases the defendant shall be available for the pretrial hearing in the courthouse, and shall sign the completed conference report when necessary to waive constitutional rights or when the report contains stipulations as to material facts. The conference report shall be tendered to the first session judge for his examination and approval before the clerk accepts it for filing.

The first session judge shall personally meet with counsel and examine the proposed conference report so as to bring it into conformity with the spirit and language of Mass. R. Crim. P. 11. The judge shall determine the likelihood of trial, its length, and the issues in dispute. At this hearing the first session judge has the responsibility to foster plea negotiations within constitutional parameters. The first session judge may, in her discretion, send the case to any available criminal session for a pretrial hearing, and the judge sitting in the receiving session shall conduct the pretrial hearing.

At the pretrial hearing, the judge shall confirm the case track designation assigned at arraignment or designate a different track in accordance with Section III. In the event the parties are unable to resolve the case and seek further dates, the judge shall thereafter establish dates for the filing of any disputed motions; hearing dates, a final pre-trial conference, and a trial date. In the event that such dates are scheduled in a session other than the first session, such dates shall be tentative until approved by the First Session Judge.

## VII.

### FINAL CASE TRACK DESIGNATION

At the pretrial hearing, the judge shall confirm the case track designation assigned at arraignment or designate a different track in accordance with Section III. In the event the parties are unable to resolve the case and seek further dates, the Judge shall thereafter establish dates for the filing of any disputed motions, hearing dates, a final pretrial conference, and a firm trial date. In the event that such dates are scheduled in a session other than the first session, such dates shall be tentative until approved by the First Session Judge.

In confirming the final case track designation applicable to the case, the Judge may consider whether any special circumstances exist to warrant placing the case on an alternate track. Special circumstances may be raised orally by counsel at the pretrial hearing or may be set forth in a written submission to the court. Special circumstances include, but are not limited to: unavailability of a victim or essential witness; information relating to the victim's capacity to testify at trial within the time frame established by the case track; existence of multiple defendants; anticipated delays occasioned by necessary forensic or scientific testing (e.g. DNA testing, drug analysis of multiple samples, etc.); necessity for extended pretrial hearings such as Daubert/Lanigan, Bishop/Fuller or similar proceedings, but not including motions to dismiss or motions to suppress statements, evidence, search warrants, or identifications. Counsel shall be afforded an opportunity to be heard regarding the existence of any special circumstance.

After consideration of special circumstances, the Judge shall confirm the Final Case Track Designation applicable to the case and shall so designate on the record. Cases designated on the "A" Track shall presumptively be tried within 180 days of arraignment. Cases designated on the "B" Track shall presumptively be tried within 270 days of arraignment. Cases designated on the "C" Track shall presumptively be tried within 360 days of arraignment.

Following the Court's determination of the Final Case Track Designation, the Judge, in consultation with counsel, shall schedule a trial date, falling within the presumptive time periods set forth above. The Judge shall also schedule dates for any contemplated pretrial proceedings as reflected in the pretrial conference report, and shall schedule a Final Pretrial Conference 14 days prior to the assigned trial date. The selection of a trial date by trial counsel, either as reflected in

the pretrial conference report or following the pretrial hearing, shall be deemed to be the equivalent of the district attorney placing the case on the trial list under G.L. c. 278, §1, and in accordance with Mass. R. Crim. P. 11 (a)(1)(C), shall not be changed without express permission of the court.

## **VIII.**

### **AMENDMENTS TO THE SCHEDULING ORDER**

The Court recognizes that there are cases which by their very nature and complexity require special tracking standards and, as well, that unanticipated events may delay the trial of a case or require that a previously determined date be extended or continued. Therefore, a Scheduling Order may, from time to time and for good cause shown, be amended upon oral motion of the parties. All requests for an enlargement or limitation of a scheduled event shall in the first instance, be made by oral motion to the judge sitting in the session where the case is assigned. If the session judge hearing the motion denies the motion to enlarge or amend the scheduling order, the aggrieved party may file a motion for reconsideration with the session judge who heard the oral motion. The motion for reconsideration shall be in writing and set forth a statement specifying in detail the facts upon which the moving party then relies in support of said motion. The motion for reconsideration, and any opposition thereto, shall be submitted on the briefs without personal appearance or oral argument by counsel within seven days of the denial or the oral motion.

In the event the scheduling order is amended, the clerk shall enter the amended dates in the court's electronic docket and shall revise the Scheduling Order accordingly.

## **IX.**

### **EARLY DISPOSITION PROCEDURE**

At anytime within 45 days of the pretrial conference, counsel may advance the case for an early disposition by notifying the first session clerk who shall schedule the case for a hearing. An early disposition by way of a change of plea may occur in the first session or may be sent by the first session judge to any available criminal session for a plea.

## **X.**

### **FINAL PRETRIAL CONFERENCE**

A final pretrial conference shall be held fourteen days prior to the scheduled trial date. Trial counsel shall attend the final pretrial conference. Prior to the conference, counsel shall meet for the purpose of preparing a Joint Pretrial Memorandum, which shall be filed with the Court at the time of said final pretrial conference. Unless all counsel agree otherwise, counsel for the Commonwealth shall be responsible for preparing and circulating the first draft of the memorandum which shall contain the following component parts:

- (1) Agreed statement of facts to be read to the jury during impanelment. (If counsel are unable to agree, each attorney shall submit a proposed statement of facts);
- (2) Proposed stipulations of the parties;
- (3) List of names of prospective witnesses;
- (4) List of proposed exhibits;
- (5) Statement of disputed legal issues, including but not limited to evidentiary issues (i.e. privilege, immunity, fresh complaint testimony, rape-shield, etc.);
- (6) List of anticipated pretrial or trial motions to be heard by the trial judge;
- (7) Whether the defendant or any witness is in custody, and if so, where;
- (8) Whether the defendant or any witness requires an interpreter or other similar needs and, if so, the language or service sought; and
- (9) Estimated length of trial.

## XI.

### PROCEDURES APPLICABLE TO THE FIRST SESSION

The First Session shall receive all presentments by the grand jury, shall conduct all arraignments, bail reviews, dangerousness hearings, and other pretrial hearings and proceedings. The First Session Judge may utilize a Magistrate's Session to conduct arraignments, bails and pretrial proceedings as assigned by the First Session Judge, and may also transfer cases to available criminal sessions for discrete events (e.g. a pretrial conference or pretrial hearing). All trial dates shall be set in the First Session and all motions for continuance or amendment to the Case Track Designation shall take place in the First Session.

The First Session Judge shall assign cases scheduled for trial to the criminal trial sessions then sitting. Ordinarily, cases involving defendants in custody, defendants whose pretrial liberty is reasonably believed to present unusual risks to society, and cases given priority by statute (i.e., criminal proceedings for sex crimes involving child victims or witnesses), shall be given priority.

Once in every two months, the Regional Administrative Judge or his/her designee shall conduct a tracking review of all cases that have been scheduled but not reached for trial within the presumptive time, as amended or extended by the Court. All such cases shall be prioritized for trial at the earliest available date.

**XII.**

**MULTI-LOCATION AND SINGLE SESSION COUNTIES**

In those counties where from time to time there are only single judge criminal sessions, the duties imposed upon the first session judge by part XI may be modified as necessary.

**XIII.**

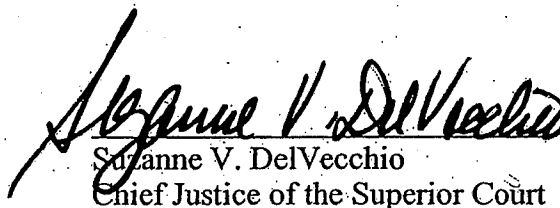
**JUDICIAL DISCRETION**

It is understood that specific situations may arise from time to time which require some variation from the procedures set forth above. In the interest of justice and to address specific concerns in unusual circumstances, and in the promotion of judicial efficiency, the first session judge, in his or her sound discretion, may extend the time periods and alter procedural requirements hereinbefore mandated.

**XIV.**

**EFFECT OF THIS STANDING ORDER**

The procedures set forth herein are intended to facilitate the timely, fair and accurate resolution of criminal cases and to ensure the efficient use of court resources. They do not supplant any existing rule of criminal procedure or statute. A defendant's statutory right to a speedy trial is determined by Mass. R. Crim. P. 36 and not by reference to this Standing Order.

  
Suzanne V. DelVecchio  
Chief Justice of the Superior Court

DATED: July 12, 2004